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U.N. Experts Debate U.S. Order to Moscow

By ELAINE SCIOLINO

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UNITED NATIONS, N.Y., March 10 — The decision by the United States to force the Soviet missions to the United Nations to reduce their size has touched off a debate among experts in international law.

In interviews, the experts agreed that the 1947 Headquarters Agreement between the United States and the United Nations Secretary General does not give the United States explicitly the right to determine the size of missions of member nations.

Under the accord, the United States is obliged to issue a visa to any legitimate representative of any government assigned to the United Nations for purposes solely connected with United Nations activities, and is given the right to expel any individual who abuses such privileges.

The issue on which experts disagree is whether abuse of privilege must be proved on a case-by-case basis.

The United States contends that nothing in the agreement explicitly permits missions to grow infinitely, and that the three Soviet missions, whose staffs are larger than those of the next two largest missions combined, are too big.

U.S. Sees Burden on F.B.I.

It has called for a reduction of Soviet staffs on the ground that mission members engage in espionage, and the large number of people involved places an undue burden on the Federal Bureau of Investigation, which is supposed to keep track of their activities.

Under the arrangements that led up to the formation of the United Nations at the end of World War II, the Soviet Union is represented not only by a delegation from its central government, but also by delegations from two of its constituent republics, the Ukraine and Byelorussia, on the ground that these two states, by virtue of their location near the Soviet Union's western border, suffered particularly from the German invasion during the war.

Among those who question the legality of the United States order is Thomas M. Franck, professor of law at New York University and the author of a history of the United Nations.

"While the Headquarters Agreement

is not absolutely clear on this matter, it strongly suggests that what the United States is doing is illegal," he said. "The United States cannot arbitrarily refuse to issue visas unless it can prove a violation of the agreement in each case."

Columbia Professor Backs U.S.

But Oscar Schachter, a professor of law at Columbia University who, as deputy counsel at the United Nations, participated in negotiations for the Headquarters Agreement, believes that the United States is justified in setting limits on mission size.

"There is no unilateral right on the part of any government to send as many people as it wants," he said. "The United States has the right to claim that any mission is excessive in size and contrary to the aims and purposes of the agreement, just as the United Nations has the right to challenge that claim."

Professor Schachter cited a clause in the agreement that requires the United States, the United Nations Secretary General and the member state concerned to agree on that country's representation. If there is a lack of agreement, the United Nations can challenge the United States' decision and refer the question to a three-member tribunal, whose decision would be binding, Professor Schachter said.

Other experts criticize the arbitrary nature of the American decision, which, they say, can only hurt international relations.

Swiss and the Geneva Arms Talks

Richard Gardner, professor of law at Columbia University and a former Deputy Assistant Secretary of State for International Affairs, said:

"This is an area where the law is not very clear, but to set arbitrary numerical limits strikes me both as bad law and as bad policy for the United States. How would the U.S. feel if the Swiss

told us how large a staff we could have at the Geneva arms talks?"

While legal experts acknowledge that a number of staff members assigned to missions, particularly the Soviet missions, abuse their privileges, they said there were better ways to resolve such problems.

"I see a certain risk to our own interests in proceeding to deal with a very clear Soviet abuse on a unilateral basis," said John Lawrence Hargrove, executive director of the American Society for International Law. "We have a strong stake, as the host country, to observe the rules and not act in an arbitrary fashion, to at least exhaust all possibilities by strong negotiation first."

Strong U.N. Response Is Urged

Some experts believe that Javier Pérez de Cuéllar, the Secretary General of the United Nations, must respond strongly.

"If the Secretary General does not stand up for the right of access on this one, he is asking for the organization to be moved out of the United States," Professor Franck of New York University said.

Some Western diplomats say the United Nations will be reluctant to challenge the United States, in part to avoid further antagonizing a Government that is violating its treaty obligations by refusing to pay all of its assessed share of the United Nations budget.

Elliot Richardson, a former Attorney General and chairman of the United Nations Association, noting that the issue of mission size was not covered by the Headquarters Agreement, said: "A more regularized machinery will be needed to address this problem in the future. The U.S. and the U.N. should enter into discussions on a supplemental accord to fill this legal void."